




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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,006	08/22/2003	Frederick James Diggle III	030266	8959
26285	7590	12/06/2004		
KIRKPATRICK & LOCKHART LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222			EXAMINER SAETHER, FLEMMING	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/646,006		Applicant(s) DIGGLE ET AL.	
	Examiner Flemming Saether		Art Unit 3677	
	<p align="center">-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</p> <p>Period for Reply</p> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). <p>Status</p> <p>1) <input type="checkbox"/> Responsive to communication(s) filed on ____.</p> <p>2a) <input type="checkbox"/> This action is FINAL. 2b) <input type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p> <p>Disposition of Claims</p> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-20</u> is/are pending in the application.</p> <p> 4a) Of the above claim(s) ____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) ____ is/are allowed.</p> <p>6) <input type="checkbox"/> Claim(s) ____ is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) ____ is/are objected to.</p> <p>8) <input checked="" type="checkbox"/> Claim(s) <u>1-20</u> are subject to restriction and/or election requirement.</p> <p>Application Papers</p> <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on ____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.</p> <p> Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p> Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p> <p>Priority under 35 U.S.C. § 119</p> <p>12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p> a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:</p> <p> 1. <input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p> 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. ____.</p> <p> 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p> <p> * See the attached detailed Office action for a list of the certified copies not received.</p> <p>Attachment(s)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____.</p> </div> <div style="width: 48%;"> <p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: ____.</p> </div> </div>			

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9 and 17-20, drawn to a securing device, classified in class 411, subclass 401.
- II. Claims 10-16, drawn to a method of making a securing device, classified in class 29.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the securing device could be made without dividing the metal shank such as be simply adding first and second support members onto a shank.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: species A, Fig. 3; species B, Fig. 4.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 6, 7, 10-12, 17 and 20 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Mr. Waller on 29 November 2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of both a group and species (for example group I, species A) the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Flemming Saether
Primary Examiner
Art Unit 3677